

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MEKEIA Y BUTLER
Claimant

APPEAL NO: 07A-UI-09701-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

OC: 08/26/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Comprehensive Systems, Inc. (employer) appealed a representative's October 3, 2007 decision (reference 01) that concluded Mekeia Y. Butler (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Sheryl Pringel, the director of personnel, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 4, 2006. The claimant worked part-time about 20 hours a week as a direct support staff employee. The claimant provided support to disabled individuals at a facility. At the time of hire, the claimant received information on the employer's policy. The policy stated that if the employer found an employee asleep at work, the employer would discharge the employee.

The employer considered the claimant a very good employee and her job was not in jeopardy prior to May 12, 2007. On May 12, a supervisor observed the claimant with her head back on a sofa and her eyes closed for 5 to 10 minutes. The employer concluded the claimant was sleeping at work. The claimant denied she had been sleeping at work. Instead, she asserted she had closed her eyes because she did not feel well. In accordance with the employer's policy, the employer discharged the claimant. Since the employer considered the claimant an excellent employee, the employer offered to rehire her after she had been discharged. The claimant declined this offer in May 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. In accordance with the employer's policy, the employer had no choice but to discharge the claimant. Even though the claimant violated the employer's policy, the evidence does not establish that she intentionally fell asleep at work. Instead, she did not feel well and inadvertently fell asleep at work. Since this was the first time the claimant had done this and the employer offered to rehire the claimant, the facts do not establish that this isolated incident rises to the level of work-connected misconduct. Therefore, as of August 26, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 3, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not intentionally disregard the employer's interests or commit work-connected misconduct. As of August 26, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs